

February 28, 2011

Representative Carl Gato, chairman House Judiciary Committee

On February 22, 2011 I sent the following e-mail to you and other members of the House Judiciary Committee:

I am stunned that the House Education Committee has advanced House Bill 6 and sent it on to the Judiciary Committee. The bill's introduction is a knee-jerk reaction to a problem several years ago that has been solved under current law. If I read the bill correctly, it allows the governor to suspend a regent for a variety of real or imagined reasons including those listed on Lines 18-28 of Page 3. Under this bill, if the governor does not like the way a regent votes on some issue, or even the way the regent combs his or her hair, the sitting governor can suspend that regent and force the regent to show why he or she should not be removed from office. That is quite a threat, and it also seems to go against the idea that a person is innocent until proven guilty. If this bill is put into law it will be possible for a governor to pack the board of regents with members of his own party or persons who share his opinions on various issues such as evolution, abortion or other that could affect how the regent might vote on issues facing the governance of the University of Alaska. In essence, this bill puts the regents in the position of serving in office at the pleasure of the governor, and thereby voids the protection afforded by AS 14.40.140. This is a bad bill, detrimental to higher education in Alaska. If it comes to you for a vote, I strongly urge you to reject it--
-T. Neil Davis, professor emeritus and alumnus, University of Alaska Fairbanks

I now wish to thank Representative Max Gruenberg, co-sponsor of House Bill 6, for telephoning me on February 23 and 24, 2011 to discuss my objections to the bill. In these discussions Rep. Gruenberg stated that the intent of the bill was to speed up the current process for removal of a University of Alaska Regent as stated in Article 2 Section 20 of the Alaska Constitution:

All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

I understand that such impeachment currently is the only way a University of Alaska regent can be removed from office because of the guarantee afforded by the Alaska Constitution Article 7, § 3. Board of Regents stating, "The University of Alaska shall be governed by a board of regents. The regents shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of

the board,” and Alaska Statute § 14.40.140 which says, “Except for a student regent as specified in AS 14.40.150(b), the term of office of a regent is eight years. The term of office begins on the first Monday in February of the year in which the appointment is made. Each regent serves until a successor is appointed and qualifies.”

I note that the governing board of the University of Alaska (initially called Trustees and later Regents) has been in existence for 94 years and that 145 Alaskans have served on the board. In only one instance has there been cause to initiate impeachment proceedings against a sitting regent, James C. Hayes in 2007, and that he then resigned at that point.

In view of these facts I contend that the wording of the Alaska Constitution and existing statutes have proven capable of solving all problems that have occurred during the course of almost a full century. Therefore, I further contend that there is no need for the drastic actions allowed by House Bill 6, and that such actions run counter to the intent of the framers of the Constitution of the State of Alaska to insulate the University of Alaska and the Board of Regents from inappropriate political action.

In our discussions of the matter Rep. Gruenberg stated that he believed the existing process for removal of a regent was too slow, and HB 6 would allow for rapid removal of a regent. I contend that the removal of a regent is a matter of serious nature that deserves deliberate due process spelled out by Article 2 Section 20 of the Alaska Constitution, describing the impeachment process. It should not be possible for the executive branch or the legislature to avoid such due process in seeking to remove a regent from his or her duties.

Representative Gruenberg stated to me that one objective of the proposed bill was to make certain that the full 11-member board was in existence at all times, and that the attendance of the full board was necessary for the board to conduct its duties. It is not clear to me that the proposed bill accomplishes this aim or that the attendance of the full board is necessary, since only a quorum of six is required to conduct business. In this connection I note that of the last eleven regent meetings during only six was the full board in attendance (see Board Minutes).

In the Legislative Findings and Purpose of HB 6 are the strange statements:

- (2) under AS 14.40.170(b)(1), the legislature has delegated to the Board of Regents the power to regulate itself, but the Board of Regents has not adopted self-governance rules that authorize the board to remove or suspend a regent in appropriate circumstances;
- (3) the legislature has the power to create procedures under which the governor may remove a regent for good cause or suspend a regent in appropriate circumstances....

Regarding the first of these statements: AS 14.40.170(b)(1) states that the Board of Regents may (not shall) “adopt reasonable rules, orders, and plans with reasonable penalties for the good government of the university and for the regulation of the Board of Regents.” It likely would be unconstitutional for the regents to adopt any rules that would allow them to suspend or remove a member. Similarly, with regard to the second statement, the Alaska Constitution does not award the legislature the power to cause removal of a regent for any reason whatsoever other than by impeachment.

One final point:

During our discussion, Rep. Gruenberg verified that the passage of HB 6 would allow a governor to notify a regent of suspension, and the suspension would be effective immediately

and remain in effect until the regent called for a hearing and the result of the hearing would not justify the suspension. So if the regent did not try to defend self, that would, at least temporarily, terminate the regent's service on the board. Even if without any justification whatsoever, such an act would cast doubt on the character of the regent and perhaps do irreparable damage to the regent's reputation. Just the knowledge that such an act could be committed is a threat to the aforementioned clear intent of the framers of the Constitution of Alaska to insulate the University of Alaska and the Board of Regents from politics.

Please reject this bill. And remember, there is good reason why the Constitution establishes the regent's term of office at not less than eight years—it is to insulate the regents from politics as much as possible.—Neil Davis, 375 Miller Hill Road, Fairbanks, AK 99709, 479-2732, neildavs@mosquionet.com